

Decision No. 19678

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

**ORIGINAL**

In the Matter of the Application of  
HOBART ESTATE COMPANY, a corporation,  
and EMMA ROSE, for leave to discon-  
tinue the service of water for ir-  
rigation, mining and domestic use in  
the County of Calaveras, State of  
California.

Application No. 13180.

McCutchen, Olney, Mannon & Greene, by Allen P. Mathew,  
and John T. Pigott, for Applicants.

Edward Van Vranken, for San Joaquin County, Protestant.

J.W. Coleberd, for San Francisco County Loan Company.

Virgil M. Airola, Rowan Hardin and Frank Folletti,  
for Protestants.

LOUTTIT, COMMISSIONER:

O P I N I O N

This is an application for authority to discontinue irrigation service, filed by Hobart Estate Company, a corporation, and Emma Rose, who are the owners as tenants in common of certain properties operated under the firm name and style of Utica Mining Company and engaged, among other things, in the sale and distribution of water for domestic, mining and irrigation purposes, and also in the generation of electric energy for general use in and in the vicinity of Murphys, Douglas Flat, Vallecito, Carson Hill, Altaville and Angels Camp, in Calaveras County. The application alleges in effect that for many years last past the expenses necessarily incurred by applicant in

furnishing water for irrigation and purposes other than domestic service in the Town of Angels Camp have been and now are greatly in excess of the gross revenue received; that a rate sufficient to make said service compensatory would be prohibitive; that such water service outside of Angels Camp is not public utility in character but has always been and now is incidental and a mere accommodation to the consumers. Wherefore, applicants ask that, in the event the Railroad Commission should consider the water service outside of the Town of Angels Camp to be a public utility service, said Commission authorize applicants to discontinue such service, saving and excepting the furnishing of water for domestic purposes to the inhabitants of the Town of Angels Camp.

Public hearings in this matter were held in Angels Camp after all interested parties had been duly notified and given an opportunity to appear and be heard.

For a history and description of this system, reference is hereby made to our Decision No. 19639, issued in connection with Case No. 2266, Williams et al. vs. Utica Mining Company.

The evidence shows that in 1926 this company supplied 134 consumers with water for domestic, irrigation and mining purposes outside of its municipal system in Angels Camp, which supplied approximately 314 consumers. The rates in effect for ditch service for irrigation and mining purposes are 20 cents per miner's inch day of twenty-four hours above Pipe Reservoir and 15 cents per inch below. The miner's inch being equivalent to 1/40 of a cubic foot per second, these charges for all practical purposes are equivalent to \$4.00 and \$3.00, respectively, per acre foot. Rates for domestic service outside of Angels Camp range from \$1.00 to \$3.00 per month, according to use of water.

*Notes  
of Case  
No. 2266*

These rates have been in effect for a great many years and were never established by the Railroad Commission.

A few months prior to the filing of the application herein, certain consumers of this utility filed formal complaint with the Commission alleging, among other things, that the said Utica Mining Company had arbitrarily diminished and curtailed the deliveries of water for irrigation and domestic purposes outside of Angels Camp; had rendered inadequate and interrupted service and for several years last past had indulged in unfair discrimination against many of the consumers. This matter was entitled "H.P. Williams et al., Complainants, vs. Utica Mining Company, a co-partnership, et al., Defendants," and designated Case No. 2266. By stipulation, it was agreed by all interested parties that this case be combined with the instant proceeding for hearing only and that all evidence so received may be considered in either matter in so far as germane.

Formal protest against the granting of applicants' request to discontinue water service was filed by the County of San Joaquin, alleging in effect that said county owns jointly with the County of Calaveras a tract of land comprising seventy-one acres adjoining the Townsite of Murphys; that said County of San Joaquin is the owner of ninety-nine per cent interest in a joint tuberculosis sanatorium now in course of construction on said tract at an estimated cost of two hundred thousand dollars; that water for domestic and irrigation purposes is absolutely necessary for the operation of said sanatorium and that the only available adequate supply is from the system of the Utica Mining Company, for which water service application has already been made to said company. The Calaveras Water Users Association, an organization representing all of the

domestic and irrigation water users outside of Angels Camp, also appeared in opposition to the application.

Although applicants alleged in their petition that the service which they now wish to discontinue is not public utility in character, they receded from this contention during the hearings held herein, at least to the extent that they now state that they will not resist a finding by this Commission to the effect that the service is in fact public utility in character. In view of the somewhat indefinite nature of this concession on the part of applicants, it should perhaps be stated at this time that the evidence clearly shows that the entire water supply of the Union Water Company was dedicated to the public use in the late "Fifties" principally for mining purposes, but also for irrigation, domestic, commercial, water power and industrial purposes and has been continuously so devoted to the public use, at least as to those waters discharged from the tail race of the Murphys Power Plant subsequent to the commencement of its operation on or about the year 1898. In this connection, it should also be noted that in several instances in proceedings before courts of record said applicants have recited and alleged in their pleadings therein that this same service of water rendered for irrigation, domestic, mining and other purposes, now before this Commission was a public utility service.

The evidence in this matter discloses the following facts: This ditch system was originally designed for delivering water for placer mining purposes in Calaveras County. With the decline of this type of mining and the advent of quartz mining, a large part of the water supply was devoted to this latter class of service. In recent years, the system was rearranged to generate electricity through the Murphys Power Plant, con-

structed in 1898, and all waters were run through this plant before delivery for other purposes. This change resulted in several irrigation water users being required to obtain water deliveries from other ditches and in certain instances the consumers, themselves, were forced to pay the costs of constructing new canals and ditches to procure service, although the relocations were required for the sole convenience of the utility. During the entire operation of the ditch system, water was delivered for agricultural irrigation, domestic, water power and industrial purposes generally throughout the area covered by the distribution canals. In more recent years and until the construction of the second power plant at Angels Camp in 1920, no restrictions were ever placed upon the amount of water delivered for any and all purposes, nor was service refused to any who properly applied therefor.

With the possible exception of the past two or three years, the records of water deliveries and actual acreage served are fragmentary, incomplete and unreliable. No actual water measurements were ever made until very recently; the amounts of deliveries were estimated through observation only by the superintendent of the distribution ditches, and, in practically all cases, the only entries made in any of the company's records consisted of the total charge made against the consumer. The evidence presented by applicants purporting to show the actual deliveries in miner's inches to the users for various years prior to 1923 is derived by applying the rate per miner's inch to the total of the bills. It is obvious that, in any attempt to determine a definite volume of water allocated in any specific period in the past to irrigation and domestic service in the area outside of Angels Camp, great weight cannot reasonably be given

to such figures. This is especially true in view of the testimony of all irrigation water users, which unanimously and conclusively shows that all such users received very much in excess of the amounts they would have obtained under actual measurement and that, when recent attempts were made by the company to deliver water by accurate wler measurements in the exact amounts determined by the above mentioned computations, the volume of deliveries was so much less than formerly received that, in practically all instances, the consumers were either forced to reduce their acreage or were unable to mature their crops. The evidence is clear that at least since the season of 1923 the company has failed to deliver sufficient water for the then existing consumers, has refused to allow additional water for increased acreage and has also refused to supply new consumers with water for irrigation purposes. Under such a fixed policy of discouragement, it is obvious that this class of service has been prevented by applicants' own acts from proper development and from earning increased revenues.

The evidence shows that a greater area than that now irrigated at some time in the past received water for irrigation uses, and that at the present time there are approximately 400 acres of land irrigated. However, the evidence conclusively indicates that a considerably greater acreage would have been under irrigation at the present time had the utility been willing to furnish a dependable supply instead of gradually withdrawing the water formerly available for this service and diverting it for foreign purposes in power development at the Angels Power Plant. It may therefore reasonably be said that this utility has dedicated its water supply to the general public in the territory covered by its distribution system.

Based upon the deliveries of water during 1926, all water was used once for power purposes; thereafter, the waters

were distributed between the Angels Power Plant, Angels Domestic, and irrigation and other service outside of Angels Camp. The percentage of water deliveries in 1926, which may be taken as a fair indication of operating conditions and methods, is as follows:

Power-----	98.48%
Outside of Angels Camp-----	1.27%
Angels Camp-----	0.25%
Total-----100.00%	

Bearing the above percentages in mind, it is interesting to note the segregation of operating expenses submitted by applicants in support of their allegations that the irrigation service is being conducted at a loss:

TABLE 1

	1921	1922	1923	1924	1925	1926
Revenues, Electric	\$119,943.	\$88,805.	\$74,944.	\$79,566.	\$60,526.	\$91,018.
Expenses, Electric	<u>51,558.</u>	<u>44,043.</u>	<u>42,414.</u>	<u>40,491.</u>	<u>51,053.</u>	<u>49,175.</u>
Net Revenue, Electric	\$ 68,385.	\$44,762.	\$32,530.	\$39,075.	\$ 9,473.	\$41,843.
Revenues, Water:						
Angels Domestic	\$ -	\$ 7,614.	\$ 7,320.	\$ 7,650.	\$ 7,441.	\$ 7,942.
Outside Angels	-	<u>3,087.</u>	<u>2,536.</u>	<u>2,626.</u>	<u>2,898.</u>	<u>2,676.</u>
Total Water Revenues	\$ 10,729.	\$10,701.	\$ 9,856.	\$10,276.	\$10,339.	\$10,618.
Combined Water Expenses	<u>38,901.</u>	<u>41,834.</u>	<u>37,362.</u>	<u>44,230.</u>	<u>37,484.</u>	<u>47,281.</u>
Net Revenue, Water	\$ 28,172*	\$31,133*	\$27,506*	\$33,954*	\$27,145*	\$36,663*
Net Revenues, Combined Electric and Water	\$ 40,213.	\$13,629.	\$ 5,024.	\$ 5,121.	\$17,672*	\$ 5,180.

\*Deficit.

The following figures are taken from the Annual Reports of the Utica Mining Company filed with the Commission and show a considerable variance with the corresponding figures in Table 1 compiled from exhibits filed by applicants:

TABLE 11

	: Water Service : : Outside : : Angels Camp :	: Angels Camp : : Domestic : : Operations :	: Combined : : Water : : Operations :	: Electric : : : : Operations :	: Combined : : : : Operations :
<u>Year 1925:</u>					
Revenues	\$2,088.	\$8,254.	\$10,342.	\$61,211.	\$ 71,553.
Expenses	-	-	41,897*	40,545.	82,442.
Msc. Expenses	-	-	-	-	608.
Net Operating Revenue	\$ -	\$ -	\$31,555**	\$20,666.	\$ 11,497**
<u>Year 1926:</u>					
Revenues	\$1,937.	\$8,681.	\$10,618.	\$91,018.	\$101,636.
Expenses	-	-	15,688*	\$80,624.	96,312.
Msc. Expenses	-	-	-	-	143.
Net Operating Revenue	\$ -	\$ -	\$ 5,141**	\$10,322.	\$ 5,181.

\*Operating Costs Combined.  
\*\*Deficit.

Analysis of the evidence presented in connection with the revenues and expenses shows that applicants have attempted to burden the water properties with the major portion of the costs of diverting, storing and transmitting water to the Murphys and Angels Power Plants. This is well illustrated by applicants' Exhibit No. 15, summarized in part in Table 1 supra, wherein all maintenance and operating expenses on the Utica Conduit, amounting to \$8,672. in 1925 and \$18,389. in 1926, and for the Angels Ditch System, including the Ross and Pipe Reservoirs, \$6,850. in 1925 and \$2,816. in 1926, were charged solely and entirely against the water system. None of the costs incurred in connection with the above conduit and ditch system, although necessary to the operation of the power plants, were charged against electric operations. The extent to which Angels Ditch is used for irrigation purposes is shown by the revenues received therefor amounting to \$107. in 1925 and \$92. in 1926. The present method is to operate the



system principally and primarily for the generation of power, and all waters are first run through the Murphys plant before diversion and use for other purposes. Of the waters passing the Murphys Plant, only an insignificant portion thereof is ever used for irrigation purposes. It is clear that but a small, if any, part of the costs of constructing, operating and maintaining the properties is properly chargeable against the water users.

The allocation of taxes for combined water and electric operations for the year 1926 is typical of applicants' tax segregation for the preceding five years.

TAXES 1926

	: Electric :	Water :
U.S. Dept. of Agriculture Reservoir Tax	\$	\$ 794.00
U.S. Forestry Service Camp Site Tax		10.00
State Electric Gross Revenue Tax (King Tax Bill)	4,268.59	
State Water Franchise Tax		280.00
Water Rights--Tuolumne County		192.14
Reservoirs--Alpine County		2,113.47
Calaveras County Taxes:		
Utica Conduit		1,528.56
Houses, pipe lines, etc., at Murphys		16.09
Portions of Angels, Union & North Ditches		537.00
Portion of Angels Ditch to Ross Reservoir		298.74
Ross, Lane and Pipe Reservoirs		360.93
Ditches and pipe lines and Angels Camp distribution system within Angels Camp		227.50
Gold Cliff Ditch and other ditches and pipe lines outside of Angels Camp		212.30
South Ditch System		40.59
Personal Property, office, stable and shops		372.31*
Miscellaneous items		1.60
Total	\$4,268.59	\$6,985.23

\*Allocated to General Expense.

From the above segregation, it will be seen that the bulk of these taxes is solely for that part of the system developed for and devoted to the generation of power. Although the combined domestic and irrigation demands have received the benefit of only a very small percentage of the total use of the waters, yet there is charged against the water service for 1926 approximately sixty-two per cent of all taxes paid for said year for both water and electricity. As to the Federal assessments for reservoirs and camp-site purposes and the water right taxes assessed by Tuolumne County and the reservoir taxes charged by Alpine County, as well as the tax assessed upon the Utica Conduit, it is clear that a very small, if any, part thereof, amounting to \$4,618.17, can in any reasonable manner be properly chargeable against water service. The same is true of the taxes assessed against the Ross, Lane and Pipe Reservoirs, Angels Ditch and the personal property taxes, except to the extent such items are used for water and irrigation purposes as compared with their joint use in certain instances for hydro-electric power generation at the Angels Power Plant. Applicants claim that, under the gross revenue tax on electric corporations, such tax is in lieu of all other taxes, and, for that reason, all other taxes paid should be allocated as expense of furnishing the water service. In this regard, it may be stated that the above provision does not include Federal taxes of any nature whatsoever, and, as to county taxes, it is very clear that the amounts charged against the water utility's properties are entirely out of line with the taxes assessed against the electric properties. The annual reports filed by this company show that the fixed capital installed as of December 31, 1926, amounted to \$654,221., of which a very small

part may reasonably be allocated to the water properties. Apparently, the company has willingly acquiesced in the payment of these county taxes, for it must be assumed that, had the company made reasonable efforts to apply for redress to the State Board of Equalization as provided by law, the total taxes levied against properties of the company devoted to the service of water would have been imposed upon those properties devoted exclusively to that service. Analysis of the taxes charged against water service for the year 1927 shows that, for the purposes of this proceeding, the sum of \$1,800. may reasonably be allocated as taxes paid upon the properties devoted exclusively to the water service, and this amount apportioned as follows: \$600. to Angels Domestic service and the remaining \$1,200. to the service outside.

The Utica Mining Company maintains a San Francisco office in charge of the general manager of the company's properties, E.S. McCurdy, and also has a resident superintendent at Angels Camp. The San Francisco office is maintained solely as a convenience to the conduct of this company's mining interests and in no sense of the word can be considered as reasonable or necessary in the conduct of its public utility business in Calaveras County. It logically follows therefore that so much of the charges heretofore allocated to the public utility water service and attributable to the San Francisco office is not properly chargeable against the local water operations.

Applicants have submitted an estimate of the annual maintenance and operating expenses for the service furnished outside of Angels Camp amounting to \$12,043. and \$7,063. for Angels Domestic service. However, the evidence shows that the reasonable annual costs of operating and maintaining these systems, after eliminating unreasonable and improper charges, are \$4,700. for

the outside service and \$3,000. for Angels Domestic service, making a total of \$7,700.

The water operations for 1926 resulted in a net return of practically \$3,000. Instead of an out-of-pocket loss, as alleged by applicants, this indicates that the combined water operations of this utility for 1926 produced at least the equivalent of a four per cent net return on \$75,000., or six per cent on \$50,000; this return undoubtedly would have been greater had not the utility deliberately discouraged the use of water for irrigation. Applicant has always conducted its water operations and its accounting as a unit and has presented no evidence to this Commission indicating the fair and proper value for rate-fixing purposes of any of its properties, either irrigation or domestic, segregated or otherwise; however, from the evidence available, the net return above does not appear unreasonable under the circumstances.

The evidence shows that the delivery of water for irrigation purposes produces a greater net return per acre foot under present rates than the use of such water for the generation of electric power. However, the rates charged by this utility for water have not as yet reached the point where the use of such waters for agricultural purposes is prohibitive; as a matter of fact, many irrigation districts and utilities serving water in foothill regions charge a higher rate for water than applicants. This company has never applied to the Commission for the establishment of a greater and more remunerative rate for its irrigation service, having apparently been satisfied by the gross returns from the water operations as a whole, and, until a utility has shown an endeavor to perform an adequate and reasonable service

and made an endeavor to expand such service in the territory it is obligated to supply at rates which may be found reasonable, it should not be permitted to discontinue its public utility duties.

Full consideration of the evidence presented in this matter leads to the conclusion that applicants have failed to justify their request for authority to discontinue their public utility water service to consumers on that part of their water system outside of Angels Camp, and I therefore recommend the following form of order:

O R D E R

Application as above entitled having been made to this Commission, public hearings having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that Hobart Estate Company, a corporation, and Emma Rose, owners as tenants in common of certain public utility properties operated under the fictitious firm name and style of Utica Mining Company, be and they are hereby directed to file with the Railroad Commission, within thirty (30) days from the date of this order, the schedule of rates now charged for all classes of water service delivered to their consumers from their water system outside of the Angels Camp Domestic service area.

IT IS HEREBY FURTHER ORDERED that in all other respects the above entitled proceeding be and the same is hereby denied.

The effective date of this order shall be twenty (20) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Com-

mission of the State of California.

Dated at San Francisco, California, this 26<sup>th</sup>  
day of April, 1928.

Leon Whitell  
Chase

W. S. Rost  
M. J. Lee  
Commissioners.